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SUBJECT: RULING AK PARTY'S HYPOCRITIC OATH: THE ATTEMPT TO RE-CRIMINALIZE ADULTERY AND FORNICATION

(U) Classified by Ambassador Eric S. Edelman; reasons: E.O. 12958 1.4 (b,d).

11. (C) Summary: An attempt by ruling AK Party (AKP) to re-criminalize adultery and fornication raises serious questions about AKP's commitment to EU values and the party leadership's ability to move away from its Islamist roots. End summary.

12. (U) In the run-up to the EU's October progress report on Turkey's implementation of Copenhagen Criteria for membership and in the midst of outgoing EU Commissioner for Enlargement Verheugen's determinedly upbeat visit, the ruling AKP leadership -- PM Erdogan and Deputy PM/FonMin Gul -- has insisted on seeking to re-criminalize adultery and fornication (zina). Verheugen, who had planned to raise the issue only in private meetings with Erdogan and Gul, was forced to declare publicly Sept. 9 that AKP's move "must be a joke." (Note: EU views on the proposed adultery legislation will be reported septel. End Note).

13. (U) But Islam-influenced AKP's move is no joke, and once again Erdogan and his government have demonstrated a questionable sense of timing and agenda. Zina has been de-criminalized in Turkey since 1996, when Turkey's Constitutional Court voided the then-current law because it provided lighter penalties for men than for women. Despite that, the GOT is pushing to have the mid-September parliamentary debate on revisions to the Turkish Penal Code -- revisions essential to comply with Copenhagen Criteria -- include zina. Initially attempting to introduce the issue in a way which would penalize only women, AKP then agreed to main opposition CHP's apparent offer to support the move if both men and women would be subject to prosecution.

14. (U) Erdogan, Gul and others assert that the move is designed to protect women and that the vast majority of Turkey's population wants re-criminalization in the light of Turkey's traditions and moral values. As expected, AKP's move has provoked distaste within the "secular" elite.

15. (C) More significant is the scorn expressed to us by leading figures in the mainstream conservative/pious opposition (e.g., political consultant Huseyin Kocabiyik) and those close to, or within, AKP (e.g., former Customs undersecretary Nevzat Saygilioglu, AKP MP Ersonmez Yarbay). This scorn stems from what both "secularists" and pious critics of AKP see as AKP's rank hypocrisy. Many contacts from across the spectrum have remarked bluntly that, were the move to succeed, Education Minister Huseyin Celik (openly consorting with his secretary), Interior Minister Abdulkadir Aksu (a predilection for teenage girls), and Erdogan foreign policy advisor Omer Celik (Russian prostitutes) would be among the many AKP officials vulnerable to prosecution. Our contacts note that the practice of "preacher weddings" (imam nikahi), under which a man will have an imam bless his union -- whether for several hours or sine die -- is thin cover indeed for cheating. Contacts who have a grounding in Islam note that the most authoritative saying of Mohammed (hadith) on zina requires several male eyewitnesses of the act itself to prove commission. Both men and women who have criticized the move also point out that AKP's plan to have the law applicable only on complaint from the aggrieved party renders it hollow since most women would fear being thrown out on the street -- or worse -- if they sought to have their husband charged.

16. (C) In addition, internal AKP critics such as Yarbay have underscored to us that, by pursuing re-criminalization of zina, the AKP leadership is distracting attention from trying to fix serious flaws in the draft Penal Code revision, including holdover language restricting freedom of speech (article 159 on speech considered insulting to the presidency or armed forces) or criminalizing the wearing of Islamic dress.

17. (C) Why this issue, and why now? Since coming to power both Erdogan and Gul have repeatedly made a point of asserting publicly that they have changed, that they and their party are firmly committed to democratic values. Yet, as we have seen with AKP's attempts to force the pace on other issues of high sensitivity for Turkey's rigid

Establishment (e.g., Islamic headscarves, general university access for graduates of preacher high schools), both men remain trapped by deeply ingrained Islamist instincts. Erdogan demonstrates this tendency in a more open, tribune-of-the-people way, Gul in a way which is hidden behind an affable manner but, in the view of the broadest possible cross section of our AKP contacts, even more categorical underneath.

18. (C) Moreover, both men see such an initiative as (1) resonating deeply with the AKP base, a base otherwise more and more frustrated at AKP's inability to date to increase employment or achieve a breakthrough on the Islamic headscarf question, and (2) putting additional pressure on the prevailing, narrow Kemalist definition of secularism and on "secularists" for approving sin. Additional factors include the Erdogan-Gul rivalry, with each man determined to outmaneuver the other, and Erdogan's inability to control policy gambits by the most radical elements in his party.

19. (C) Justice Minister and AK government spokesman Cicek told the Ambassador September 9 that the zina issue is topping his agenda. Cicek thinks there is no constitutional problem with the law as long as it treats men and women equally. Cicek said the AK government is trying to find middle ground on the law with the law's opponents by making it a crime only for those who want it to be a crime. (Note: This refers to a possible provision in the law that cases will only be prosecuted upon the complaint of an aggrieved spouse. End Note.)

110. (C) Comment: AKP's move goes against the grain of EU values, but even AK and CHP contacts opposed to the law expect the zina legislation to pass Parliament. We expect that, if passed, such legislation will be vetoed by President Sezer. The draft law has not yet been made public, but we expect the law on its face will treat men and women equally. However, those opposed to the law predict that, in practice, the law's impact will fall more heavily on women. We think AKP's stance raises troubling questions about how much Erdogan, Gul, and their party's base have really changed from their hard-core Islamist past. End Comment.
EDELMAN